Supreme Court, U. S.
FILED
MAR 10 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

Number 78-1026

David E. Klingaman, trading as
Banner Sightseeing Company, and
Joy R. Klingaman

Petitioners

vs.

Martin L. Sommers

Respondent

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

David E. Klingaman, trading as
Banner Sightseeing Company, and
Joy R. Klingaman
Petitioners Pro Se
11700 Charles Road
Silver Spring, Maryland 20906
Telephone: 202-942-1976

INDEX

	Page
General Comments On Brief In Opposition	1
Statement Of The Case	2
Argument	5
Conclusion	8
Certificate Of Service	8

TABLE OF CITATIONS

Page

Florida Constitution, Art. I, Sec. 9 --- 5

Florida Jurisprudence

6 Constitutional Law:

Sec. 320 ---------- 5
Sec. 322 ---------- 5
Sec. 325 ---------- 5
Sec. 326 ---------- 5

9A Damages:

Sec. 23 ---------- 5
Sec. 24 ---------- 5
Sec. 27 ---------- 6
Sec. 96 ---------- 5
Sec. 134 ---------- 5
Sec. 137 ---------- 5

Cases

Green v. Van Buskirk ---------- 7
74 U.S. 139

Overby v. Gordon ---------- 7
177 U.S. 214

St. Lucie Estates v. Palm Beach Plumbing Supply Co. -------- 6
133 So. 841, 101 Fla. 205

GENERAL COMMENTS ON BRIEF IN OPPOSITION

1. Banner has been advised by the U.S. Supreme Court Clerk that M. L. Sommers' Motion to Dismiss will be considered as a Brief in Opposition.

2. M. L. Sommers was granted an extension of time for filing said Brief because he declared his inability to write it himself and because he wanted R. D. Sparkman to write and file it after being admitted to the Bar of the U.S. Supreme Court. R. D. Sparkman was admitted but M. L. Sommers nevertheless thereafter filed pro se.

3. Said Brief was not timely filed.

4. Nowhere therein does M. L. Sommers refer to the Record to support his various allegations.

5. Nowhere therein does M. L. Sommers cite any constitutional provisions, statutes, cases or authorities to support his various contentions.

STATEMENT OF THE CASE

Absolutely untrue is M. L. Sommers' assertion that Petitioners' General Statement of the Case "editorially is a set of gross misrepresentations." He specifies none.

To the contrary, the Record completely supports Petitioners' General and Chronological Statements of the Case and shows that M. L. Sommers misstates several case occurrences, to wit:

1. M. L. Sommers wrongly asserts that both Banner and J. R. Klingaman sued him. In fact, only Banner sued him. (R. 6, 8, 35a, 76) J. R. Klingaman was not specified as a Plaintiff until the Amended Complaint (R. 77-79) was filed, and then completely unbeknownst to either Banner or J. R. Klingaman. In the Amended Complaint, only Banner (not J. R. Klingaman) prays for relief. For more facts and argument, please see Petition 13-14, 21-22, 34 and 36-43.

2. M. L. Sommers mentions some Motion to Dismiss but there is none in the Record.

3. M. L. Sommers' only basis for pressing his money claim against J. R. Klingaman is his allegation that some discovery shows that J. R. Klingaman is an owner of Banner Sightseeing Company. There is no such dis-

covery. The Record repeatedly and undisputedly shows that Banner Sightseeing Company is solely owned by David E. Klingaman, to wit:

a. Deposition. (R. 31)
b. Interrogatories. (R. 92)
c. Trial. (R. 153, 210)

The amended caption has always specified that J. R. Klingaman does not trade as Banner Sightseeing Company. (R. 1, 77, 90, 92, 98, 101, 107, 109, 149, 343, etc.) For more facts and argument, please see Petition 13, 21-22, 37 and 43.

4. M. L. Sommers wrongly asserts that the Fla. Circuit Court's stating that it retained jurisdiction (R. 107-108, 352-353, 395-396) flowed from the Motion for Rehearing. (R. 110-112) It was vice versa.

5. M. L. Sommers wrongly asserts that Petitioners removed the boat from Florida after the Fla. Circuit Court stated in January and February 1977 that it retained jurisdiction. (R. 352-353, 395-396, 107-108) In fact, removal by only Banner (not J. R. Klingaman) occurred five months before, in August 1976, (R. 357, 372) pursuant to the Fla. Circuit Court's Final Judgment of July 9, 1976. (R. 98-100) It was impossible for

Banner to timely return the boat in November 1976 or soon thereafter because of ice, bad weather and necessary repairs. (R. 372-376, 382-388) There was no refusal whatever. For more facts and argument, please see Petition 13-15, 22-23, 44-45 and 47-48.

6. M. L. Sommers wrongly asserts that both Petitioners were "ordered to return the boat and were found in contempt when they failed to do so." In fact, only Banner was ordered to return the boat (R. 395-396, 107-108) and only Banner was found in contempt. (R. 118-119) J. R. Klingaman is not even a party to the Agreement (R. 87) and the Fla. Circuit Court carefully never even said that it retained jurisdiction over her. (R. 395-396, 107-108) For more facts and argument, please see Petition 14-15, 23, 44-45, 47-50 and 62-69.

7. M. L. Sommers wrongly implies that the Agreement provides for "money damages" for "failure to pay the agreed upon rent." In fact, the Agreement makes no such provision and does not even contain the word "rent" or a synonym. (R. 80-87) For more facts and argument, please see Petition 14-15, 18-20 and 72-76.

ARGUMENT

1. The pertinent Agreement is a District of Columbia contract. (R. 87)

2. Banner sued M. L. Sommers because M. L. Sommers breached the Agreement in 1975 and 1976. (R. 77-79) The forum was Florida because of the boat's situs there. For more facts and argument, please see Petition 13, 21 and 80-84.

3. If the Final Judgment (R. 1) rests on Florida contract law, it must also rest on the Florida Constitution and on Florida law re damages, which require:

a. No person shall be deprived of property without due process of law. (Fla. Const., 1968, Art. I, Sec. 9)

b. Reasonable and adequate notice of claim. (6 Fla.Jur., Constitutional Law, Secs. 320, 322, 325; 9A Fla.Jur., Damages, Sec. 134)

c. Ample opportunity to be heard re liability and damages. (6 Fla.Jur., Constitutional Law, Secs. 320, 322, 326; 9A Fla.Jur., Damages, Sec. 137)

d. Proof of claimant's attempted mitigation of damages. (9A Fla.Jur., Damages, Secs. 23, 24, 96)

e. Claimant's recovery is limited to

the amount necessary to restore him to the position in which he would have been if the alleged breach had not occurred. (9A Fla.Jur., Damages, Sec. 27)

However, in entering said Judgment, the Fla. Circuit Court failed to meet even one, let alone all, of said requirements. For more argument, please see Petition 33-79.

4. Notice analogous to original process was required before Petitioners were ordered to pay money to M. L. Sommers. For argument, please see Petition 67.

5. The Fla. Circuit Court was obliged to completely investigate the circumstances of J. R. Klingaman's being added as a party, particularly after receiving her Motion to Remove Name from Action (R. 113-117) well before entering the Final Judgment. (R. 1) The Fla. Circuit Court was obliged to set aside her apparent but unauthorized appearance. (St. Lucie Estates v. Palm Beach Plumbing Supply Co., 133 So. 841, 101 Fla. 205) But the Fla. Circuit Court's only expressed concern was with who had all the money! (R. 328) For more argument, please see Petition 33-35 and 36-61.

6. Petitioners' argument re out-of-state

personal property is no more a sham than the following analogous cases heard by the U.S. Supreme Court:

a. Overby v. Gordon, 177 U.S. 214: The jurisdiction of a state court does not extend to and embrace property not situated within its territorial jurisdiction.

b. Green v. Van Buskirk, 74 U.S. 139: The dominion of a state over personal property situated within the state is complete.

7. After the boat had been outside of Florida for five months, the Fla. Circuit Court suddenly, without notice or ample opportunity to be heard, transformed the action from an equity case of Banner vs. Sommers into a money case of Sommers vs. Banner and J. R. Klingaman. (R. 343-397, 107-108) Petitioners submit that the boat's situs outside of the Fla. Circuit Court's territorial jurisdiction created a lack of jurisdiction for said Court to order the boat returned to Florida and to enter the money judgment which flowed therefrom. Petitioners further submit that M. L. Sommers was therefore obliged to begin anew in the Maryland or Federal Courts. For more facts and argument, please see Petition 13-15, 22-23, 35-36, 61-79 and 80-84.

CONCLUSION

Petitioners respectfully petition the U.S. Supreme Court to issue a Writ of Certiorari to both the Fla. Supreme Court and the Fla. District Court.

Respectfully submitted,
David E. Klingaman, trading as
Banner Sightseeing Company, and
Joy R. Klingaman

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Reply Brief have been furnished to Respondent, Mr. Martin L. Sommers, 1380 Barbizon Lane, Naples, Florida 33942, by first class mail, postage prepaid, this 9th day of March 1979.

David E. Klingaman, trading as
Banner Sightseeing Company
Petitioner